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Attorneys for Defendant WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

THE INSTITUTE OF MEDICAL
EDUCATION, INC.,

Plaintiff,

v.

WESTERN ASSOCIATION OF
SCHOOLS AND COLLEGES, and DOES
1 THROUGH 10 INCLUSIVE,

Defendants.

CASE NO. CV11-05755 PSG

**DEFENDANT WESTERN ASSOCIATION
OF SCHOOLS AND COLLEGES
ANSWER TO PLAINTIFF'S COMPLAINT**

Complaint Filed: 11/30/11

[Assigned for All Purposes to Magistrate Judge Paul
Singh Grewal in Courtroom 5, 4th Floor]

Discovery Cutoff: None Set
Motion Cutoff: None Set
Trial Date: None Set

COMES NOW Defendant WESTERN ASSOCIATION OF SCHOOLS AND
COLLEGES and in response to Plaintiff's Complaint admits, denies, and/or alleges the
following:

NATURE OF ACTION

1. In answering paragraph 1 of Plaintiff's Complaint, Defendant admits that this is
an action for damages against WASC and Does 1 through 10. Defendant, however,
denies the remaining allegations contained within paragraph 1 of Plaintiff's complaint.

THE PARTIES

2. In answering paragraph 2 of Plaintiff's Complaint, Defendant denies the

1 allegations contained therein.

2 3. In answering paragraph 3 of Plaintiff's Complaint, Defendant admits the
3 allegations contained therein.

4 **JURISDICTION AND VENUE**

5 4. In answering paragraph 4 of Plaintiff's Complaint, Defendant denies the
6 allegations contained therein.

7 **FACTUAL BACKGROUND**

8 5. In answering paragraphs 5 through 10 of Plaintiff's Complaint, Defendant lacks
9 sufficient knowledge and information from which to admit or deny the allegations
10 contained therein and on that basis denies same.

11 6. In answering paragraph 11 of Plaintiff's Complaint, Defendant lacks sufficient
12 knowledge and information from which to admit or deny the allegations contained therein
13 and on that basis denies same.

14 7. In answering paragraph 12 of Plaintiff's Complaint, Defendant lacks sufficient
15 knowledge and information from which to admit or deny the allegations contained therein
16 and on that basis denies same.

17 8. In answering paragraph 13 of Plaintiff's Complaint, Defendant lacks sufficient
18 knowledge and information from which to admit or deny the allegations contained therein
19 and on that basis denies same.

20 9. In answering paragraph 14 of Plaintiff's complaint, Defendant admits the
21 allegations contained therein.

22 10. In answering paragraph 15, lines 4-5, of Plaintiff's Complaint Defendant admits
23 that a letter dated September 23, 2010 was sent to IME, but lacks sufficient information
24 or knowledge regarding the remaining allegations contained therein and on that basis
25 denies same. In answering lines 5, beginning with "While a number..." through line 8,
26 Defendant lacks sufficient knowledge and information from which to admit or deny the
27 allegations contained therein and on that basis denies same.

28 11. In answering paragraph 16 of Plaintiff's Complaint, Defendant denies the

1 allegations contained therein.

2 12. In answering paragraph 17 of Plaintiff's Complaint, Defendant lacks sufficient
3 knowledge and information from which to admit or deny the allegations contained therein
4 and on that basis denies same.

5 13. In answering paragraph 18 of Plaintiff's Complaint, Defendant lacks sufficient
6 knowledge and information from which to admit or deny the allegations contained therein
7 and on that basis denies same.

8 14. In answering paragraph 19 of Plaintiff's Complaint, Defendant lacks sufficient
9 knowledge and information from which to admit or deny the allegations contained therein
10 and on that basis denies same.

11 15. In answering paragraph 20 of Plaintiff's Complaint, Defendant denies the
12 allegations contained therein.

13 16. In answering paragraph 21 of Plaintiff's Complaint, Defendant lacks sufficient
14 knowledge and information from which to admit or deny the allegations contained therein
15 and on that basis denies same.

16 17. In answering paragraph 22 of Plaintiff's Complaint, Defendant lacks sufficient
17 knowledge and information from which to admit or deny the allegations contained therein
18 and on that basis denies same.

19 18. In answering paragraph 23 of Plaintiff's Complaint, Defendant denies the
20 allegations contained therein.

21 19. In answering paragraphs 24-28 of Plaintiff's Complaint, Defendant lacks
22 sufficient knowledge and information from which to admit or deny the allegations
23 contained therein and on that basis denies the allegations contained therein.

24 20. In answering paragraph 29 of Plaintiff's Complaint, Defendant denies the
25 allegations contained therein.

26 21. In answering paragraph 30 of Plaintiff's Complaint, Defendant denies the
27 allegations contained therein.

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FIRST CAUSE OF ACTION**Denial of Common Law Due Process**

22. In answering paragraph 31 of Plaintiff's Complaint, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-21 as though fully set forth herein.

23. In answering paragraphs 32-38, Defendant denies each and every allegation contained therein.

SECOND CAUSE OF ACTION**Breach of Contract**

24. In answering paragraph 39 of Plaintiff's Complaint, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-23 as though fully set forth herein.

25. In answering paragraphs 40-43, Defendant denies each and every allegation contained therein.

THIRD CAUSE OF ACTION**Breach of the Implied Covenant of Good Faith & Fair Dealing**

26. In answering paragraph 44 of Plaintiff's Complaint, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-25 as though fully set forth herein.

27. In answering paragraphs 45-47 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

FOURTH CAUSE OF ACTION**Intentional Interference with Contract (Student Enrollment Agreements)**

28. In answering paragraph 48 of Plaintiff's Complaint, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-27 as though fully set forth herein.

29. In answering paragraphs 49-54 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

FIFTH CAUSE OF ACTION

Negligent Interference with Prospective Business or Economic Advantage

30. In answering paragraph 55 of Plaintiff's Complaint, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-29 as though fully set forth herein.

31. In answering paragraphs 56-59, Defendant denies each and every allegation contained therein.

SIXTH CAUSE OF ACTION

Promissory Estoppel

32. In answering paragraph 60, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-31 as though fully set forth herein.

33. In answering paragraphs 61-66, Defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

34. Defendant is informed and believes, and on that basis alleges that the Complaint, in whole or in part, fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

35. Defendant is informed and believes, and on that basis alleges that the Complaint, and each and every claim contained therein, is barred by the applicable statute of limitation.

THIRD AFFIRMATIVE DEFENSE

36. Defendant is informed and believes, and on that basis alleges that Plaintiff has failed to mitigate their damages with respect to any and all damages proximately and/or actually caused by the actions or incidents underlying the Complaint.

FOURTH AFFIRMATIVE DEFENSE

37. Defendant is informed and believes, and on that basis alleges that Plaintiff's Complaint is barred by the doctrine of laches, estoppel, waiver and/or unclean hands.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 38. Defendant is informed and believes, and on that basis alleges that any and all
3 injuries, losses, or damages, if any, were the direct and proximate result of an
4 unavoidable incident, act of God, or resulted from natural causes, without fault or liability
5 on the part of this answering Defendant.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 39. Defendant is informed and believes, and on that basis alleges that Plaintiff has
8 no standing to bring any action against this responding Defendant.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 40. Defendant is informed and believes, and on that basis alleges that Plaintiff's
11 action is barred by the failure to join in a timely fashion, indispensable and/or necessary
12 parties to the action

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 41. Defendant is informed and believes, and on that basis alleges that the
15 underlying agreements are unenforceable due to a lack of consideration.

16 **NINTH AFFIRMATIVE DEFENSE**

17 42. Defendant is informed and believes, and on that basis alleges that Plaintiff's
18 claims are barred due to mistake and/or fraud concerning the terms of the underlying
19 agreements.

20 **TENTH AFFIRMATIVE DEFENSE**

21 43. Defendant is informed and believes, and on that basis alleges that the
22 agreements referred to in the Complaint are unenforceable and/or void as against public
23 policy.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 44. Defendant is informed and believes, and on that basis alleges that Plaintiff has
26 waived their right to enforce the underlying agreements by breaching the terms of those
27 agreements.

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TWELFTH AFFIRMATIVE DEFENSE

45. Defendant is informed and believes, and on that basis alleges that the underlying agreements have been rescinded.

THIRTEENTH AFFIRMATIVE DEFENSE

46. Defendant is informed and believes, and on that basis alleges that Plaintiff has acted so as to frustrate the purpose of the underlying agreements.

FOURTEENTH AFFIRMATIVE DEFENSE

47. Defendant is informed and believes, and on that basis alleges that this responding Defendant has satisfied its obligations pursuant to the underlying agreements.

FIFTEENTH AFFIRMATIVE DEFENSE

48. Defendant is informed and believes, and on that basis alleges that Plaintiff are estopped by their own acts and conduct from pursuing the claims alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

49. Defendant is informed and believes, and on that basis alleges that at all times relevant, its conduct was justified with regard to the claims alleged in the Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

50. Plaintiff has failed to state facts sufficient to give rise to a claim against Defendant for punitive damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

51. This action is barred for lack of subject matter jurisdiction.

NINETEENTH AFFIRMATIVE DEFENSE

52. This action is barred because Plaintiff has failed to exhaust the administrative remedies provided to it through Defendant's organization or provided by law.

TWENTIETH AFFIRMATIVE DEFENSE

53. This action is barred because it is not ripe for decision or because the action is now moot.

TWENTY-FIRST AFFIRMATIVE DEFENSE

54. Plaintiff's complaint is barred by the doctrine of res judicata or collateral estoppel.

TWENTY-SECOND AFFIRMATIVE DEFENSE

55. Plaintiff's action is barred because the alleged wrongful acts or omissions are based on the exercise of a discretionary duty or discretionary function on the part of the public defendant. Accordingly, defendant is immunized from liability as a matter of law.

TWENTY-THIRD AFFIRMATIVE DEFENSE

56. Plaintiff was provided with adequate and due notice by Defendant and the U.S. Department of Education.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

57. Defendant presently has insufficient knowledge or information upon which to form a belief as to whether Defendant may have any additional affirmative defenses to the Complaint and/or all of the claims stated therein. Accordingly, Defendant hereby reserves its right to assert additional affirmative defenses in the event that further development, events and/or discovery indicate such assertion would be appropriate.

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WHEREFORE, Defendant prays for relief as follows:

- (a) That Plaintiff take nothing against this answering Defendant;
- (b) That this answering Defendant have and recover its costs of suit;
- (c) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Defendant hereby demands a trial by jury of all issues so triable.

DATED: January 10, 2012

WOOD, SMITH, HENNING & BERMAN LLP

By: 

SEYMOUR B. EVERETT

ALICIA R. KENNON

Attorneys for Defendant WESTERN
ASSOCIATION OF SCHOOLS AND COLLEGES

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

I am employed in the County of Contra Costa, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1401 Willow Pass Road, Suite 700, Concord, California 94520-7982.

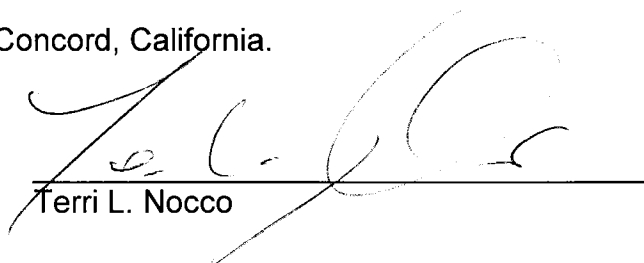
On January 10, 2012, I served the following document(s) described as **DEFENDANT WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES ANSWER TO PLAINTIFF'S COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY ELECTRONIC SERVICE (Via ECF/Pacer): Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the document(s) to be sent to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 10, 2012, at Concord, California.


Terri L. Nocco

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SERVICE LIST
The Institute of Medical Education, Inc. v. Western Association of Schools and
Colleges, et al.
Case No. USDC-N (SJ) - CV11-05755 PSG

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